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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,459	03/09/2004	Dolf Zillmann	Z0104.70000US00	2404

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EXAMINER
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TRAN, HANH VAN

ART UNIT	PAPER NUMBER
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3637

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/19/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/796,459

Applicant(s)

ZILLMANN ET AL.

Examiner

Hanh V. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-82 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10, 22, 23, 37-39, 48 and 65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-21, 24-36, 40-47, 49-64 and 66-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/13/2006</u>  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This is the First Office Action on the Merits from the examiner in charge of this application in response to applicant's reply filed on 9/21/2006.

#### ***Election/Restrictions***

2. Applicant's election of Species I of Fig 4A in the reply filed on 9/21/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
3. Claims 9-10, 22-23, 37-39, 48, and 65 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/21/2006. Regarding claim 39, although applicant fails to list claim 39 as being drawn to the non-elected Species, claim 39 is withdrawn from further consideration as being depending on withdrawn claim 38.

#### ***Specification***

4. The abstract of the disclosure is objected to because it includes legal phraseology such as the term "disclosed". Correction is required. See MPEP § 608.01(b).
5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The

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abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Claim Objections***

6. Claims 6, 8, 36 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 6 and 8 both depends on claim 4 which in turns depends on claim 3, since claim 3 positively recited "in combination with the first and second furniture members", the recitation of said limitation in claims 6 and 8, respectively, renders the claims improper for failing to further limit the subject matter of a previous claim.

### ***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-8, 11-21, 24-36, 40-47, 49-64, 68, 70-74, and 80-82 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Throughout the claims, "and/or" is vague and indefinite for failing to clearly define the metes and bounds of the claimed invention. In claim 1 and 80, line 3 recites the fastening element "adapted to enable fastening of the first furniture-engaging portion to

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a first furniture member", this language would lead the examiner to believe that applicant intends to claim only the subcombination of the furniture-engaging portion and the fastening element, the furniture member being only functionally recited. The problem arises when the furniture member is positively recited within the body of the claim, such as line 11-12 of claim 1, the furniture-engaging portion "to be matingly engaged with a first groove present within the first furniture member". In this case, there is an inconsistency within the claim. The examiner cannot be sure if applicant's intent is to claim merely the furniture-engaging portion and the fastening element or the furniture-engaging portion and the fastening element in combination with the furniture member. For the purpose of this examination, the examiner is considering that the claim is drawn to the combination of the furniture-engaging portion and the fastening element in combination with the furniture member. Clarification and correction is required. Claims 11, 13, 49, 51, the limitation "forming a smallest angle with respect to an adjacent face...of greater than about 90 degrees" is vague and indefinite for failing to clearly define the metes and bounds of the claimed invention. Claims 15 70, the limitation "without irreversibly changing the structure" of the furniture member is indefinite for failing to clearly define the metes and bounds of the limitation. Claims 18, 20, 34, the limitation "further comprising the fastening element" is indefinite for failing to clearly define the metes and bounds of the claimed invention. Claim 28, the limitation of the furniture-engaging portions being "continuous along its own length" is vague and indefinite. Claim 29, the limitation "without irreversibly changing the structure" of the furniture member is indefinite for failing to clearly define the metes and bounds of the

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limitation. Claim 45, "the undercut side" lacks antecedent basis. Claim 49, (1) line 3 recited 'at least one connecting edge" renders the limitation on line 6 of "at least one connecting edge" indefinite for failing to clearly define whether it is the same or different from the one recited in line 3. Claim 50, "wherein at least one connecting edge" should be "wherein said at least one connecting edge". Claim 52, "wherein at least one connector" should be "wherein said at least one connector". Claim 58, since line recited a plurality of furniture members, the recitation on line 9 of "a furniture member" renders the claim indefinite for failing to clearly define whether it is the same or different from the one(s) recited on line 2; same with "a furniture-engaging portion" of line 11. Claim 59, (1) lines 1 and 2, "wherein at least one" should be "wherein said at least one", (2) line 3, "a connecting edge of a furniture member" should be "the connecting edge of the furniture member". Claim

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-8, 11-21, 24-36, 40-47, 49-57, 68, 75, and 80-82 are rejected under 35 U.S.C. 102(b) as being anticipated by Great Britain 1046924 to Zillmann.

Zillmann discloses a modular furniture system comprising all the elements recited in the above listed claims including a plurality of furniture members, each having a

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plurality of connecting edges, one of said connecting edge having first and second angled portions on the first and second faces of said furniture member, respectively, such as shown in Fig 16, said connecting edge having a groove formed therein, a plurality of furniture-engaging portions 23,24,27,28,34,42, such as shown in Figs 3-19, matingly engaged with the grooves of the connecting edges, a plurality of fastening elements 36 fastening the furniture-engaging portions to the furniture members; wherein the furniture-engaging portions comprises rails each having a shape and thickness selected to enable the rail to be matingly engaged with the groove in the furniture members, wherein the rail includes a channel with at least one undercut side along a portion of its length.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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13. Claims 58-64, 66-67, 69-74, 76-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zillmann.

Zillmann discloses a modular furniture system comprising all the elements as discussed above except for the method acts recited in the method claims and the instructions recited in the kit claims.

In regard to the method claims, since Zillmann discloses all the structural elements recited in the claims, it would have been obvious and well within the level of one skill in the art to perform the acts recited in the claims. In regard to the instructions recited in the kit claims, the examiner takes the Official Notice that it is well known for a manufacturer to provide an instructions booklet within a furniture box to show a buyer how to assemble the furniture parts.

#### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Adamic et al, Jusselin et al, Dieter, Kann, Wolfensberger, Albrecht et al, and Floetotto all show structures similar to various elements of applicant's disclosure.


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HVT  
December 11, 2006

  
**Hanh V. Tran**  
**Art Unit 3637**